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ers and others. Judgment for plaintiff, and defendants bring error. Amended and affirmed.

Bond & Bruce, of Wise, for plaintiffs in error.

Vicars & Peery, of Wise, for defendant in error.

SIPE et al. v. ALLEY.

Sept. 9, 1915.

[86 S. E. 122.]

1. Easements (§ 17*)—Sale with Reference to Plat.—Where lands are laid off into lots, streets, and alleys, and a map or plat thereof recorded, all lots sold by reference thereto carry with them the right to the use of the easement in such streets and alleys necessary to the enjoyment and value of the lots.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 45-49; Dec. Dig. § 17.* 4 Va.-W. Va. Enc. Dig. 855.]

2. Dedication (§ 19*)—Acts Constituting—Recordation of Plat.—Under Code 1904, § 2510a, providing for the subdivision of land into lots and for the recordation of the plat thereof, and that the recording of such plat shall create a public easement over the premises set apart for streets, where such a plat is recorded and lots sold in reference thereto, the streets and alleys therein are dedicated, not only to the use of the purchasers, but to the use of the public generally.

[Ed. Note.—For other cases, see Dedication, Cent. Dig. §§ 35, 37-47; Dec. Dig. § 19.* 4 Va.-W. Va. Enc. Dig. 359.]

3. Dedication (§ 63*)—Streets—Abandonment—Burden of Proof.—When a street has been dedicated, the burden of showing a discontinuance, vacation, or abandonment thereof is upon the party asserting it.

[Ed. Note.—For other cases, see Dedication, Cent. Dig. §§ 103-106; Dec. Dig. § 63.* 4 Va.-W. Va. Enc. Dig. 360.]

4. Municipal Corporations (§ 657*)—Streets—"Abandonment"—Delay in Opening Street.—Delay in opening a street is not an abandonment thereof, except so far as statutory or charter provisions fix a rule to the contrary.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 722, 844, 1429, 1496; Dec. Dig. § 657.* 12 Va.-W. Va. Enc. Dig. 953.]

5. Municipal Corporations (§ 657*)—Streets—"Abandonment"—Nonuser.—A mere nonuser of a portion of a street fenced in with abutting property is not an abandonment of the street by the public.

[Ed. Note.—For other cases, see Municipal Corporations, Cent.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Dig. §§ 722, 844, 1429, 1496; Dec. Dig. § 657.* 12 Va.-W. Va. Enc. Dig. 953.

For other definitions, see Words and Phrases, First and Second Series, Abandon.]

Appeal from Circuit Court, Tazewell County.

Bill by Juanita V. Sipe and others against Virginia Alley. From a decree for defendant, complainants appeal. Reversed.

J. W. Hicks, of Graham, and *J. W. Chapman*, of Tazewell, for appellants.

Sexton & Roberts, of Graham, for appellee.

STEWART & QUINN *v.* ROGERS & DEFREES.

Sept. 9, 1915.

[86 S. E. 161.]

1. Covenant, Action of (§ 12*)—Complaint—Sufficiency.—In an action of covenant on an agreement for the sale of letters patent on a cash payment and certain deferred payments, by failure to pay which defendants' right under the contract was to be determined, the complaint was not demurrable on the ground that defendants had forfeited their rights by failing to pay the deferred payments, since such stipulation was for the seller's benefit, who might waive the forfeiture and sue for the breach of covenant.

[Ed. Note.—For other cases, see Covenants, Action of, Cent. Dig. § 16; Dec. Dig. § 12.* 3 Va.-W. Va. Enc. Dig. 735.]

2. Appeal and Error (§ 1002*)—Review—Findings.—A finding upon conflicting evidence will not be disturbed on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937; Dec. Dig. § 1002.* 1 Va.-W. Va. Enc. Dig. 620.]

3. Appeal and Error (§ 692*)—Presentation of Grounds—Exclusion of Questions.—A ruling excluding questions on the trial is not reviewable, where there is nothing to indicate the answer expected.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2905-2909; Dec. Dig. § 692.* 1 Va.-W. Va. Enc. Dig. 595.]

Error to Law and Chancery Court of City of Roanoke.

Action by Rogers & Defrees against Stewart & Quinn on covenant. Judgment for plaintiffs, and defendants bring error. affirmed.

M. M. Caldwell, of Roanoke, for plaintiffs in error.

W. J. Henson, of Roanoke, for defendants in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.